



Federal Communications Commission
Washington, D.C. 20554

February 26, 2015

DA 15-259

Dirk J. Winkel
LL License Holdings, LLC
501 Fourth Street
Sergeant Bluff, IA 51054

Re: LL License Holdings, LLC Waiver Request for Extension of Time for Wireless Services,
Call Signs WQKH490 and WQKH491 (File Numbers 0005204801 and 0005204802)

Dear Mr. Winkel:

By this Letter, we grant a Waiver Request for Extension of Time for Wireless Services filed by LL License Holdings, LLC (LL License Holdings), and extend the Tribal Lands Bidding Credit (TLBC) construction deadlines for Call Signs WQKH490 and WQKH491 to December 13, 2016 to allow LL License Holdings to construct its Lower 700 MHz A Block LTE systems.¹ We find that granting a limited waiver pursuant to sections 1.3 and 1.925 of the Commission's rules² to enable the deployment of LTE facilities as requested by LL License Holdings will facilitate the provision of advanced broadband services to the Rosebud Reservation of the Rosebud Sioux Tribe (Rosebud Sioux Reservation) and the Santee Sioux of Nebraska Reservation (Santee Sioux Reservation), while maintaining the integrity of the Commission's TLBC program.

LL License Holdings was the winning bidder of the Lower 700 MHz A Block licenses for the Rapid City, South Dakota and Sioux Falls, South Dakota Economic Area (EA) markets in Auction 73.³ The Wireless Telecommunications Bureau (WTB) granted the licenses, Call Signs WQKH490 and WQKH491, respectively, on May 20, 2009 (Licenses). LL License Holdings received a \$402,500 TLBC for Call Sign WQKH490 to serve the Rosebud Sioux Reservation, and a \$488,000 TLBC for Call Sign WQKH491 to serve the Santee Sioux Reservation, with each amount equal to fifty percent of LL License Holdings' gross bid for each respective license in Auction No. 73.⁴ As a condition of receiving the TLBCs, LL License Holdings was required to construct and operate "a system capable of serving seventy-five (75) percent of the population of the qualifying tribal land for which the credit was awarded" within three (3) years of the license grant.⁵ Under section 1.2110(f)(3)(vii), a licensee that receives a TLBC must, within fifteen (15) days of the tribal lands construction deadline, certify that the TLBC recipient has met the tribal lands construction requirement.⁶ Further, pursuant to the penalty provisions of section

¹ LL License Holdings, LLC Waiver Request for Extension of Time for Wireless Services, Call Signs WQKH490 and WQKH491 (File Numbers 0005204801 and 0005204802), filed May 11, 2012 (Waiver Request). LL License Holdings filed an Amendment on October 26, 2012, clarifying that it seeks a one-year extension until June 13, 2013.

² See 47 C.F.R. §§ 1.3, 1.925.

³ See Auction of 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction 73, *Public Notice*, 23 FCC Rcd 4572 (WTB 2008) (*700 MHz Closing Public Notice*).

⁴ See *700 MHz Closing Public Notice*; 47 C.F.R. § 1.2110(f)(3)(iv).

⁵ 47 C.F.R. § 1.2110(f)(3)(vii).

⁶ *Id.*

1.2110(f)(3)(viii), a TLBC recipient that fails to provide the post-construction certification as required must repay the bidding credit amount in its entirety, plus interest, within thirty (30) days of the applicable tribal lands construction deadline.⁷ Failure to repay as required results in automatic termination of the license.⁸

Due to delays in the transition of television broadcasters from the 700 MHz Band, the Commission determined that construction periods for 700 MHz licenses would not commence until June 13, 2009.⁹ Accordingly, the Commission established June 13, 2012, as LL License Holdings' three-year TLBC construction deadline. On May 11, 2012, one month before its three-year TLBC construction deadline, LL License Holdings filed its Waiver Request seeking an extension of its TLBC construction deadline by one year so that it could construct LTE systems.¹⁰ In its Waiver Request, LL License Holdings states that in light of the unavailability of interoperable equipment, it seeks a one-year extension of the TLBC construction deadline.¹¹

The Commission noted in the *700 MHz Interoperability Order* that U.S. wireless providers are increasingly adopting LTE technology, with all major service providers offering or planning to deploy LTE systems.¹² However, for the Lower 700 MHz Band the Commission found that the creation of two separate, non-interoperable LTE band class standards¹³ had resulted in a number of negative effects specific to that band. The Commission found that without interoperable equipment, customers cannot switch to a provider operating in a different band class without purchasing new equipment, and customers cannot roam onto the network of a service provider of a different band class.¹⁴ Moreover, the Commission concluded that the lack of interoperable devices has delayed deployment of competitive mobile broadband service in the Lower 700 MHz band.¹⁵ The Commission therefore revised technical rules and took other measures to resolve the lack of LTE interoperability in the Lower 700 MHz band.¹⁶ As part of these measures, the Commission extended the interim construction deadline for the entire class

⁷ 47 C.F.R. § 1.2110(f)(3)(viii).

⁸ *Id.*

⁹ See Implementation of the DTV Delay Act, WT Docket No. 06-150, *Second Report and Order and Notice of Proposed Rulemaking*, 24 FCC Rcd 2526 (2009) (extending the digital television transition deadline to June 12, 2009). Because unencumbered use of the 700 MHz spectrum may not have been possible during the transition process, the Commission determined that licensee construction periods would not commence until June 13, 2009.

¹⁰ See Waiver Request. On November 16, 2012, WTB issued a Public Notice seeking comment on the Waiver Request. Wireless Telecommunications Bureau Seeks Comment on LL License Holdings, LLC Request for One Additional Year To Meet Tribal Lands Construction Requirement, WT Docket 12-339, *Public Notice*, 27 FCC Rcd 14286 (WTB 2012). No comments were filed in response to the Public Notice.

¹¹ See Waiver Request.

¹² See Promoting Interoperability in the 700 MHz Commercial Spectrum, WT Docket 12-69, *Report and Order and Order of Proposed Modification*, 28 FCC Rcd 15122, 15126-7 ¶ 7 (2013) (*700 MHz Interoperability Order*).

¹³ See *id.* at 15127 ¶ 9. Industry band class standards for LTE are developed by 3GPP, an international partnership of industry-based telecommunications standards bodies. A specific LTE band class standard sets out technical specifications and signaling protocol for use within a specified range of frequencies. The differing band class standards reflect varying operating conditions within the different blocks comprising the Lower 700 MHz Band. See *id.* at 15127 ¶¶ 8-9.

¹⁴ *Id.* at 15127-8 ¶¶ 9-10, 15146 ¶ 50.

¹⁵ *Id.* at 15146-7 ¶ 51.

¹⁶ In adopting these measures, the Commission sought to facilitate a voluntary industry-derived solution designed to resolve the lack of interoperability in the Lower 700 MHz band. See *id.* at 15129 ¶ 13.

of active Lower 700 MHz A and B Block licensees, including LL License Holdings, to December 13, 2016, to permit these licensees to respond to the rule revisions.¹⁷

We note that the tribal lands construction requirement is a performance obligation separate from a licensee's obligation to comply with service-specific interim and final construction requirements. Accordingly, the Commission's action in extending the interim construction deadline for Lower 700 MHz A and B Block licensees did not automatically extend any tribal lands construction obligations for such licensees, including LL License Holdings.¹⁸ LL License Holdings must therefore demonstrate that good cause exists to warrant waiver of the tribal lands construction period.¹⁹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²⁰ Specifically, the Commission's rules state that waivers may be granted if it is shown that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.²¹ Here, LL License Holdings states that it intended to use its 700 MHz Lower A Block licenses to provide LTE service in its "home" areas of Sioux City, Iowa and Sioux Falls, South Dakota, and to expand its service area into the western parts of the Dakotas.²² As justification for its waiver, LL License Holdings argues that manufacturers have not offered LTE equipment designed for the Lower 700 MHz A Block operations.²³ Beyond this, however, LL License Holdings provides little specific information detailing its efforts with respect to the Rosebud Sioux Reservation and Santee Sioux Reservation in support of its waiver²⁴ other than a reference to the then pending Lower 700 MHz Interoperability proceeding.²⁵

¹⁷ *Id.* at 15150-15151 ¶¶ 61, 63.

¹⁸ We note that during the process of revising Lower 700 MHz A and B Block license records in the Commission's Universal Licensing System database to reflect the revised interim construction deadline of December 16, 2016, LL License Holdings' Waiver Request was inadvertently listed in the license records for WQKH490 and WQKH491 as granted. However, the October 31, 2013 ULS comments in File Nos. 0005204801 (WQKH490) and 0005204802 (WQKH491) clearly state that ULS changes were being made pursuant to the *700 MHz Interoperability Order*. The *700 MHz Interoperability Order* was applicable to the 700 MHz interim construction deadline only and did not address or affect TLBC requirements. We will therefore update the ULS entries to reflect the correct grant date of LL License Holdings' TLBC construction extension request.

¹⁹ 47 C.F.R. § 1.3.

²⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

²¹ *See* 47 C.F.R. § 1.925(b)(3).

²² *See* Waiver Request.

²³ *Id.*

²⁴ Other TLBC-related relief has been granted where, in addition to showing circumstances beyond their control or other appropriate public interest basis, licensees also demonstrated significant investment and progress in constructing infrastructure as well as support of the requested relief by the applicable tribal entity. *See e.g.* DataMax, 29 FCC Rcd at 5153-54; Ronan Telephone Company, Request for Waiver and Extension of Time of Tribal Land Bidding Credit Construction Requirement for a Lower 700 MHz Band License, *Order*, 24 FCC Rcd 983 (WTB MD 2009). We also note that in its Waiver Request, LL License Holdings states that "[w]hile there have been WiMax and other types of equipment developed for the A-Block frequencies, that is not a business [it] seeks to engage in." The Commission has consistently found that voluntary business decisions are not circumstances beyond the licensee's control and do not constitute a valid basis for regulatory relief. *See, e.g.*, Longhorn Communications Inc. Request for Waiver or Extension of Time to Construct, *Order on Reconsideration*, 29 FCC Rcd 8200 (WTB MD 2014); Redwood Wireless Minnesota, LLC, Request for a Waiver and Extension of the Broadband PCS Construction Requirements, *Order*, 17 FCC Rcd 22416 (WTB CWD 2002); Eldorado Communications LLC,

Our review of this matter leads us to conclude that, based on the Commission's findings in the 700 MHz Interoperability proceeding regarding the unique circumstances affecting the Lower 700 MHz band, good cause exists which warrants a limited waiver of LL License Holdings' TLBC construction period. Subsequent to LL License Holdings' request for relief, the Commission determined that facilitating interoperability of LTE service in the Lower 700 MHz band would bring additional competition that is likely to result in lower-priced services or tailored plan options, as well as advanced services not currently or readily available in rural or remote areas. Moreover, the Commission believed that revising its Lower 700 MHz band rules to promote LTE interoperability would remove an unnecessary barrier to the successful operation of small and regional businesses that help to drive economic growth, promote competitive service, and encourage job creation in rural America.²⁶

We find that the same public interest rationales underlying the Commission's actions in the *700 MHz Interoperability* to facilitate LTE interoperability in the Lower 700 MHz band are also applicable to the instant situation. The scarcity of wireless coverage is more pronounced in tribal communities than in other areas. Those living on tribal lands disproportionately lack broadband access,²⁷ and the Commission has previously observed that this lack of availability presents serious impediments to Native Nations' efforts to preserve their cultures and build their internal structures for self-governance, economic opportunity, health, education, public safety, and welfare.²⁸ The important impacts of interoperable LTE identified in the *700 MHz Interoperability Order* – greater choice and quality for consumers of wireless broadband services as well as its role as a catalyst for economic growth – are particularly relevant to these underserved, tribal areas. We therefore conclude that it would be contrary to the public interest to deny LL License Holdings' request to extend its original June 13, 2012 TLBC construction deadline in light of the relief provided to the entire class of Lower 700 MHz A Block licensees with respect to the interim 700 MHz construction deadline. We find that the public interest benefits associated with facilitating LTE interoperability in the Lower 700 MHz band supports a similar extension of the tribal lands construction requirement in this instance.

We therefore grant LL License Holdings' request that we extend its tribal land construction period in order for it to construct LTE systems on the Rosebud Sioux Reservation and Santee Sioux Reservation. Further, although LL License Holdings seeks a one-year extension, we note that the Commission found that a revised interim construction deadline of December 13, 2016, would be an

Request for a Waiver and Extension of the Broadband PCS Construction Requirements, *Order*, 17 FCC Rcd 24613 (WTB CWD 2002). As such, this argument plays no role in our decision to provide relief here.

²⁵ The Commission initiated the 700 MHz Interoperability proceeding shortly before LL License Holdings filed its petition.

²⁶ See *700 MHz Interoperability Order*, 28 FCC Rcd at 15122-23 ¶ 1-2.

²⁷ There is no comprehensive data regarding deployment and data rates associated with mobile broadband service. However, review of data regarding fixed broadband indicates that approximately 63 percent of Americans living on Tribal lands and in the U.S. Territories lacked access to fixed 25 Mbps/3 Mbps or higher broadband service as compared to 17 percent of the U.S. population as a whole. See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, GN Docket No. 14-126, *2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment*, FCC 15-10, 44 ¶ 79 (rel. Feb. 4, 2015). The Commission also found that tribal access lagged even with respect to lower data rates: approximately 25 percent of Americans living in Alaskan Villages and 33 percent of Americans living on tribal lands in the Lower 48 States are without access to fixed 3 Mbps/768 kbps service or higher. Forty-one percent of residents of Alaskan Villages and 48 percent of Americans in Tribal Lands in the Lower 48 States lack access to service at 10 Mbps/768 kbps or higher. *Id.*

²⁸ See Improving Communications Services for Native Nations, CG Docket No. 11-41, *Notice of Inquiry*, 26 FCC Rcd 2672 (2011).

appropriate time frame for Lower 700 MHz A and B Block licensees to respond to the rule revisions set forth in the *700 MHz Interoperability Order*. While the Commission's stringent TLBC construction rules are designed to ensure deployment of service in a short length of time, we find that the public interest weighs in favor of making available to these tribal communities the same advanced, interoperable 700 MHz LTE service offerings being deployed elsewhere, and find it appropriate to grant to LL License Holdings the same period given to all active Lower 700 MHz Band A and B Block licensees to obtain interoperable LTE equipment and otherwise respond to rule changes. Accordingly, we extend to December 13, 2016, the period within which LL License Holdings must comply with its TLBC requirements, conditioned on LL License Holdings constructing and operating LTE systems capable of serving seventy-five (75) percent of the populations of each of the Rosebud Sioux Reservation and Santee Sioux Reservation by that date. Notifications certifying that such construction has been completed must be filed with the Commission within fifteen (15) days of the December 13, 2016 deadline.

Accordingly, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and sections 1.3, 1.925, and 1.2110(f)(3) of the Commission's Rules, 47 C.F.R. §§ 1.3, 1.925, and 1.2110(f)(3), the Waiver Request for Extension of Time for Wireless Services, Call Signs WQKH490 and WQKH491, filed by LL License Holdings, LLC on May 11, 2012, and supplemented on October 26, 2012, is GRANTED to the extent described herein.

These actions are taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

Sincerely,

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau